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Extension of the terms of the ad litem judges of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of the International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Security Council
Sixty-first year

Identical letters dated 2 October 2006 from the Secretary-General to the President of the General Assembly and the President of the Security Council

I have the honour to transmit a letter dated 23 August 2006 from Judge Erik Møse, President of the International Criminal Tribunal for Rwanda, that directly relates to the ability of the International Tribunal to implement its completion strategy (see annex).

In his letter, the President recalls that the terms of office of the 18 ad litem judges will come to an end on 24 June 2007. The President has requested that the terms of office of all 18 ad litem judges be extended until 31 December 2008, which is the date when trials at the International Tribunal are, in accordance with its completion strategy, expected to be completed.

You will recall that the Security Council, by its resolution 1684 (2006) of 13 June 2006, and the General Assembly, by its decision 60/422 of 28 June 2006, extended the terms of the 11 permanent judges serving at the International Tribunal until 31 December 2008.

As far as the ad litem judges are concerned, you will also recall that the General Assembly, by its decision 57/414 C of 25 June 2003, and in accordance with article 12 ter, paragraph 1 (d), of the statute of the International Tribunal, elected from a list of candidates approved by the Security Council the following 18 judges to a four-year term of office beginning on 25 June 2003: Aydin Sefa Akay (Turkey); Florence Rita Arrey (Cameroon); Solomy Balungi Bossa (Uganda); Robert Fremr

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(Czech Republic); Taghrid Hikmet (Jordan); Karin Hökborg (Sweden); Vagn Joensen (Denmark); Gberdao Gustave Kam (Burkina Faso); Flavia Lattanzi (Italy); Kenneth Machin (United Kingdom of Great Britain and Northern Ireland); Joseph Edward Chiondo Masanche (United Republic of Tanzania); Tan Sri Dato' Hj. Mohd. Azmi Dato' Hj. Kamaruddin (Malaysia); Lee Gacuiga Muthoga (Kenya); Seon Ki Park (Republic of Korea); Mparany Mamy Richard Rajohnson (Madagascar); Emile Francis Short (Ghana); Albertus Henricus Joannes Swart (Netherlands) and Aura E. Guerra de Villalaz (Panama).

Of these 18 ad litem judges, I have to date appointed a total of 10 to serve on trials at the International Tribunal, nine of whom are, in accordance with the statute of the International Tribunal, currently serving on either multi-accused or single-accused trials.

The President has informed me that he estimates that the multi-accused trials, in which six ad litem judges are serving, will continue beyond 24 June 2007, as follows:

(a) The *Butare* trial, in which Judge Bossa is sitting. Judge Bossa has been serving in trials at the International Tribunal since 28 August 2003. The Security Council, by its resolution 1705 (2006) of 29 August 2006, and the General Assembly, by its decision 60/422 B, decided, notwithstanding article 12 ter of the statute of the International Tribunal and notwithstanding that the elected term of Judge Bossa as an ad litem judge of the International Tribunal will end on 24 June 2007, to authorize her, effective 28 August 2006, to continue to serve as a judge in the *Butare* case until its completion;

(b) The *Government* trial, in which Judge Muthoga and Judge Short are sitting. Judge Muthoga and Judge Short have been serving in trials at the International Tribunal since 27 October 2003 and 22 March 2004, respectively;

(c) The *Karemera et al.* trial, in which Judge Short and Judge Kam are sitting. Judge Kam has been serving in trials at the International Tribunal since 5 September 2004;

(d) The *Military II* trial, in which Judge Hikmet and Judge Park are sitting, both of whom have been serving at the International Tribunal since 13 September 2004.

In addition, there are two single-accused trials which the President has indicated may only be completed after 24 June 2007: the *Nchamihigo* trial to which Judge Kam and Judge Fremr were appointed and the *Bikindi* trial to which Judge Fremr and Judge Arrey were appointed. Judge Arrey has been serving at the International Tribunal since 27 October 2003 and Judge Fremr since 18 September 2006.

The other two ad litem judges who have been appointed to the International Tribunal are Judge Hökborg, who has served at the International Tribunal since 13 September 2004 and who will complete the *Seromba* trial on which she is sitting, before 24 June 2007, and Judge Lattanzi, who previously served at the International Tribunal between 27 October 2003 and 17 September 2006.

Furthermore, the President of the International Tribunal does not wish the appointment of ad litem judges to new trials that will continue beyond 24 June 2007 to be delayed until after the election of new ad litem judges. He therefore wishes to

be able to request the appointment of ad litem judges to new trials as soon as possible. The President indicates that this may include, depending on their expertise and availability, not only ad litem judges who have previously been appointed but also ad litem judges who have not yet been appointed to serve at the International Tribunal. He has accordingly requested that the terms of the remaining eight ad litem judges also be extended until 31 December 2008.

These judges are: Aydin Sefa Akay (Turkey), Vagn Joensen (Denmark), Tan Sri Dato' Hj. Mohd. Azmi Dato' Hj. Kamaruddin (Malaysia), Kenneth Machin (United Kingdom), Joseph Edward Chiondo Masanche (United Republic of Tanzania), Mparany Mamy Richard Rajohnson (Madagascar), Albertus Henricus Joannes Swart (Netherlands) and Aura Emérita Guerra de Villalaz (Panama).

The statute of the International Tribunal does not provide for extending the term of office of the ad litem judges. In the absence of such a provision, the approval of the Security Council, as the parent organ of the International Tribunal, and of the General Assembly, as the organ that elects its judges, would be needed in order to extend the term of office of all the ad litem judges of the International Tribunal elected on 25 June 2003.

I would request that the Security Council and the General Assembly, in the light of the explanations provided above, grant such approval.

Furthermore, the approval of the Security Council and the General Assembly is needed to allow Judges Bossa, Arrey, Lattanzi, Muthoga, Short, Hökborg, Hikmet, Kam and Park to serve in the International Tribunal beyond the cumulative period of service provided for under article 12 ter, paragraph 2, of the statute of the International Tribunal and until 31 December 2008.

Article 12 ter, paragraph 2, provides that:

> During their term, ad litem judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal for Rwanda, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years.

I would also request that the Security Council and the General Assembly grant such approval.

The President is of the view that early action is needed in order to provide the International Tribunal with the continuity, stability and certainty necessary for the efficient and effective planning of trials. I would therefore appreciate the Security Council and the General Assembly taking this matter up at their earliest opportunity.

As far as the financial consequences of the President's proposal are concerned, ad litem judges will only have their terms extended until the date when the completion of trials is foreseen. The Security Council and the General Assembly would then, in 2008, be able to review the status of the International Tribunal's ad litem judges.

Finally, in accordance with General Assembly resolution 57/289, should the cumulative period of service of ad litem judges amount to three years or more, this will not result in any change in their entitlements and benefits and, in particular, will not give rise to any additional entitlements or benefits other than those that already

exist and which will, in such an eventuality, be extended pro rata by virtue of the extension of their service.

I would be grateful if you have the present letter and its annex circulated as a document of the General Assembly and of the Security Council.

(*Signed*) Kofi A. **Annan**

Annex

Letter dated 23 August 2006 from the President of the International Criminal Tribunal for Rwanda to the Secretary-General

As the term of office of the ICTR ad litem judges expires in June 2007, elections would have to take place at the end of 2006 or early 2007. The purpose of the present letter is to request an extension until the end of 2008 of the term of office of these judges in order to respect the deadline for the completion strategy.

You will recall that on 13 June 2006, the Security Council, pursuant to resolution 1684 (2006), extended the term of office for 11 permanent ICTR judges until the end of 2008. On 28 June 2006, the General Assembly also endorsed your recommendation to extend their term. The reason for this was to ensure the continuity, stability and certainty necessary for the efficient and effective planning of trials and to enable ICTR to meet the 2008 deadline set out in Security Council resolution 1503 (2003). As the term of office of the permanent judges had been set to expire in May 2007, but with trials expected to continue well beyond that time, an extension of the term of permanent judges for about 19 months was clearly preferable to elections for another four-year period commencing May 2007. The same argument is valid in relation to the extension of the term of office of ad litem judges.

On 25 June 2003, the General Assembly elected 18 ad litem judges to ICTR. According to article 12 ter, paragraph 1 (e), of the ICTR statute, ad litem judges shall be elected for a term of four years. They shall not be eligible for re-election. Their term of office expires on 24 June 2007.

Of the 18 ad litem judges, 10 have been appointed by the Secretary-General: Judge Solomy Balungi Bossa (Uganda), appointed with effect from 28 August 2003; Judges Flavia Lattanzi (Italy), Lee Gacuiga Muthoga (Kenya) and Florence Rita Arrey (Cameroon), appointed with effect from 27 October 2003; Judge Emile Francis Short (Ghana), appointed with effect from 22 March 2004; Judges Karin Hökborg (Sweden), Taghrid Hikmet (Jordan), Seon Ki Park (Republic of Korea) and Gberdao Gustave Kam (Burkina Faso), appointed with effect from 13 September 2004; and Judge Robert Fremr (Czech Republic), appointed with effect from September 2006 (replacing Judge Lattanzi).

Six of these judges are engaged in ongoing multi-accused trials. Judge Bossa is sitting in the voluminous *Butare* case (six accused); Judges Muthoga and Short are hearing the *Government* case (four accused); and Judges Hikmet and Park form part of the bench in the *Military II* trial (four accused). These three trials are expected to be completed in 2007. Judges Kam and Short are sitting in the *Karemera et al.* case (three accused), which, having resumed de novo in September 2005, is expected to conclude in 2008.

There is a need to dispense with the three-year period stipulated in article 12 ter, paragraph 2, of the statute. This is for two main reasons. First, with regard to the six judges mentioned above, they have to complete the trials in which they are currently involved. Otherwise, the cases would have to start de novo when the three-year period ends.

An illustration is Judge Bossa, whose three-year period expires on 28 August 2006, whereas the *Butare* trial will continue into 2007.

Second, it may be necessary to use serving ad litem judges in other trials, as they have acquired significant institutional knowledge.

As soon as trials are completed and courtroom space is available, there will be a need to assign the current ad litem judges to new single-accused cases which will continue beyond June 2007. For instance, Judge Arrey and Judge Fremr have recently been appointed to sit in a new trial which commences in September 2006. It is not a viable option to postpone the commencement of new single-accused trials until after June 2007. Such a course would result in loss of valuable time and make it impossible to respect the deadline set out in resolution 1503 (2003).

As with the permanent judges, it is clearly preferable to extend the term of office of the serving nine ad litem judges for 19 months, from May 2007 until December 2008, instead of proceeding to re-election for four years (as was done for ICTY, following the adoption of Security Council resolution 1597 (2005)). Moreover, it is uncertain whether all of them would be re-elected if the ICTR statute is amended in order to allow for re-election of ad litem judges. In the worst case scenario, this could lead to trials having to commence de novo with new judges. A prolongation by the Security Council of the term of individual judges who were not re-elected would only relate to part-heard cases and not to other judicial activities, and hence lead to underutilization of available judicial resources.

There may be a need to replace an ad litem judge once he or she has completed a trial after June 2007. The term of the remaining eight ad litem judges who were elected by the General Assembly in 2003, but who have not yet been appointed to serve at the International Tribunal, should therefore also be extended. These judges are Aydin Sefa Akay (Turkey) Vagn Joensen (Denmark), Tan Sri Dato' Hj. Mohd. Azmi Dato' Hj. Kamaruddin (Malaysia), Kenneth Machin (United Kingdom of Great Britain and Northern Ireland), Joseph Edward Chiondo Masanche (United Republic of Tanzania), Mparany Mamy Richard Rajohnson (Madagascar), Albertus Henricus Joannes Swart (Netherlands) and Aura Emérita Guerra de Villalaz (Panama).

It would be appreciated if you would transmit the present letter to the Presidents of the Security Council and the General Assembly for their consideration and necessary action, with a view to extending the term of all 18 ICTR ad litem judges until the end of 2008.

(*Signed*) Erik **Møse**
President